IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR

WEDNESDAY, THE 18TH OCTOBER 2006 / 26TH ASWINA 1928

SA.No. 458 of 1994(D)

{A.S.NO.43/1990 OF THE SUB COURT, HOSDRUG
IN O.S.NO.51/1989 OF THE PRINCIPAL MUNSIFF,
KASARAGOD}

.....

APPELLANT:

MANHA PUTHIYAVEETTIL CHINDA PODUVAL,
S/O.DECEASED LAKSHMI AMMA,
FIREMAN, RESIDING AT CHANDERA,
MANIYAT VILLAGE,
P.O.MANIYAT, HOSDRUG TALUK.

BY ADV. SRI.V.R.VENKATAKRISHNAN
SRI.N.C.JOSEPH

RESPONDENTS:

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1. MANHA PUTHIYAVEETTIL KANNA PODUVAL,
S/O.DECEASED MANICKAM AMMA,
CHANDERA MANIYAT VILLAGE,
P.O.MANIYAT, HOSDRUG TALUK.

2. DO. CHIRI AMMA, D/O. DO. DO. DO.

3. DO. RAMA PODUVAL,
S/O.ERAVIL, PILICODE VILLAGE,
POST POLICODE,
HOSDRUG TALUK.

4. DO. BALAKRISHNA PODUVAL,
S/O.DECEASED LAKSHMI AMMA,
PROPRIETOR, NICE BAKERY,
OLD KENT ROAD,
MANGALORE -1, KARNATAKA STATE.

R1 TO R3 BY ADV. SRI.MPR.NAIR

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.1192/94 IN S.A.NO.458/94

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
18.10.2006. JUDGE

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR, J.

S.A.No.458 of 1994 D

Dated this the 18th day of October, 2006.

JUDGMENT

The 4th defendant, the grandson of one Manickam Amma, is the appellant in this second appeal. He is assailing the concurrent decree whereby the claim for partition of property is dealt with.

2. The plaintiff, the maternal uncle of the 4th appellant sought for partition in respect of the share of his mother Manickam Amma, who is the grandmother of the appellant, in A scheduled property. The courts below concurrently found that the plaintiff was entitled to 1/6th share in A scheduled property. According to the appellant/4th defendant, he was not entitled to that much. Therefore, this second appeal.

3. The courts below came to the conclusion that the plaintiff was entitled 1/6th share in the plaint scheduled property interpreting Ext.A1 partition deed entered into by the said Manickam Amma, the plaintiff, his brother and sister viz., defendants 1 and 2, and the appellant/4th defendant and his brother, 3rd defendant. The appellant is giving another interpretation to Ext.A1 and contends that his grandmother Manickam Amma did have only 1/3rd share in A scheduled property and therefore, the plaintiff will be entitled only to 1/4th of that 1/3rd and not 1/6th of the entire A scheduled property.

4. The substantial question of law in support of this contention is whether the interpretation given by the court below to the covenants in Ext.A1 is justified.

5. There was also a contention centered around Ext.A2 Will that its executant - the said Manickam Amma, did

not have any right to bequeath because, she did have only the life estate in the properties covered by it, even going by the covenants therein. It is yet another substantial question of law raised in this second appeal.

6. I will first consider the effect of Ext.A1. Kannan Nair is the grandfather of the appellant. He died leaving certain properties and his widow, Manickam Amma, and their children viz.,plaintiff his sister - the 1st defendant and his brother 2nd defendant and Lakshmi Amma, the mother of the appellant. By reason of the application of the provisions in Section 8 read with Schedule I of the Hindu Succession Act, all the said 5 persons acquired equal right over the property left by Kannan Nair i.e. 1/5th share each. The property remained in the ownership and enjoyment of all the five. While so, Lakshmi Amma, [the mother of the appellant and 3rd defendant] died. In Ext.A1, A scheduled property

was set apart jointly in favour of Manickam Amma, and her grandchildren viz., the appellant/4th defendant and 3rd defendant, who are the heirs of deceased Lakshmi Amma, the daughter of Manickam Amma. The contention of the appellant is that by reason of setting apart A schedule property in favour of the said three, in the absence of any covenant defining their individual share in A scheduled property, each one of them gets only 1/3rd right therein. Consequently, on the death of Manickam Amma, only the pro rata share will revert back to the plaintiff. In other words, Manickam Amma did not have half the right in A scheduled property, as contended by the plaintiff, the appellant submits.

7. On the other hand, it is contended by the 1st respondent/plaintiff that the arrangement of partition effected in Ext.A1 whereby A scheduled property had been

left as the common property belonging to Manickam Amma, and defendants 3 and 4 (appellant) was only, considering the respective shares of each. On the death of Kannan Nair, Manickam Amma had only 1/5th share in the property left by him and the mother of defendants 3 and 4 did have another 1/5th share. As the mother of defendants 3 and 4 (appellant) was no more, her rights devolved on defendants 3 and 4 (appellant). It was that share that had been set apart in as common property. Therefore, the respective shares in A scheduled property are to be half right to Manickam Amma, and the remaining half right available for Lakshmi Amma will be divided among defendants 3 and the 4th defendant/appellant. It is the further contention that, on the death of Lakshmi Amma, 1/3rd share therein had also gone to Manickam Amma, being the mother of that deceased. Therefore, defendants 3 and 4 did have only the remaining

share in the A scheduled property. It is to give effect to this share, that Ext.A1 partition was effected and the A scheduled property was set apart in favour of Manickam Amma and the children of Lakshmi Amma, defendants 3 and 4 in common. Therefore, Manickam Amma had, over and above the half right in A schedule, the 1/3rd right over the remaining half in the said common property. So, she had a bequeathable right over the property. When Ext.A2 Will is also taken into account, the plaintiff will be entitled to 1/6th share. In support of this contention, the covenants contained in Ext.A1 is much relied on.

8. Thus the question is what was the intention of the parties at the time of executing or entering into Ext.A1 partition deed.

9. It is an admitted case that the properties were left behind by Kannan Nair, the husband of Manickam

Amma and that Kannan Nair has been succeeded by 5 members, his widow and 4 children equally. Ext.A1 refers to the death of one among the children Lakshmi Amma, the mother of the appellant in the following words:

"..... ...."

{On death of Kannan Nair, his properties were devolved on parties 1 to 4 to the document and to Lakshmi Amma. Later on death of Lakshmi Amma, the daughter of No.1 and the mother of parties 5 and 6 (3rd defendant and the appellant/4th defendant) the share of Lakshmi Amma had devolved upon NO.1 (Manickam Amma) and Nos.5 and 6 (3rd defendant and /appellant/4th defendant).

10. After coming to this understanding, it is again recited in the document that:

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{The properties, remained in the common possession and enjoyment. As it was inconvenient to enjoy the property in the joint ownership and possession and as few of them had demanded for partition of the said common property, all of us have decided to effect partition.}

11. It was thereafter the shares were allotted as:

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(Taking into account the lie and quality of the property and the convenience of the parties as agreed to in the presence of mediators, the property is partitioned and A scheduled property is set apart for No.1 (Manickam

Amma and Nos.5 and 6 (3rd defendant and appellant/4th defendant) among us jointly).

12. If this joint allotment of A scheduled property in favour of Manickam Amma and her grandchildren is meant to be equal, there was no reason for reciting about the reversion of 1/3rd share of Lakshmi Amma to the mother Manickam Amma in this document or the stipulation that after the death of Kannan Nair the properties were equally enjoyed by Kannan Nair's 5 heirs including Manickam Amma and deceased Lakshmi Amma [the mother of the appellant and 3rd defendant]. If the property had really been intended to be in joint possession with equal interest, these recitals in the document were unnecessary especially, that relating to reversion of 1/3rd share left by the pre-deceased daughter. That was specifically stipulated by the mother because the

mother had never intended to part with any of her rights that she got from her deceased husband, and also that reverted to her by reason of death of her daughter Lakshmi Amma. That means the joint possession in respect of A scheduled property in Ext.A1 was in respect of the respective shares of No.1 Manickam Amma and No.4 [3rd defendant] and No.5 [the appellant] mentioned in that document. Necessarily, 3rd defendant and the appellant got interest in A scheduled property by way of the share of their mother Lakshmi Amma alone after reversion of the interest in that property in favour of Manickam Amma, mother of deceased Lakshmi Amma. Therefore, in A schedule, 3rd defendant and the appellant together did have only ½ - [1/3rd x ½]. In other words, ½ -1/6 = 2/6. In other words Manickam Amma did have 4/6 interest in A schedule property.

13. Now, I will consider the relevance of Ext.A2. Ext.A2 was executed by Manickam Amma. The contention assailing Ext.A2 was that Manickam Amma did not have a bequeathable right in the property covered by Ext.A2 going by the covenant in Ext.A1. Covenants of Ext.A1 has already been discussed. The parties had been conscious of the shares over the property left not only by Kannan Nair, but also the property left by Lakshmi Amma as well. Added to this is the statutory provision contained in Section 8 of Hindu Succession Act, whereby Manickam Amma receives the property absolutely. When thus Manickam Amma had absolute share over the properties left by her daughter Lakshmi Amma, definitely she will have the right to bequeath that right in favour of the persons of her choice shown as legatees in Ext.A2. Therefore, Ext.A2 cannot any more be assailed on that count.

In the result, the questions of law raised do not arise in his case. The Second Appeal stands dismissed. No costs.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR , J.

S.A.No.458 of 1994 D

JUDGMENT

18th October, 2006.